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ASSOCIATION OF CALIFORNIA EGG FARMERS

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA

Plaintiff,

v.

THE STATE OF CALIFORNIA; GAVIN
C. NEWSOM, in his Official Capacity as
Governor of California; KAREN ROSS,
in her Official Capacity as Secretary of
the California Department of Food &
Agriculture; ERICA PAN, in her Official
Capacity as Director of the California
Department of Public Health; and ROB
BONTA, in his Official Capacity as
Attorney General of California,

Defendants.

Case No. 2:25-cv-06230-MCS-AGR

**MEMORANDUM OF LAW IN
SUPPORT OF THE UNOPPOSED
MOTION TO INTERVENE OF
PROPOSED DEFENDANT-
INTERVENOR ASSOCIATION OF
CALIFORNIA EGG FARMERS**

Hearing Date: September 8, 2025
Time: 9:00AM PT
Location: Courtroom 7C, 7th Floor

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1 The Association of California Egg Farmers (“ACEF”) submits this
2 memorandum in support of its unopposed motion to intervene as a Defendant-
3 Intervenor under Federal Rule of Civil Procedure 24.¹ ACEF’s members are
4 California egg farmers who have a direct and substantial interest in ensuring that the
5 California food safety and animal welfare provisions challenged in this action are
6 upheld. The challenged provisions help to ensure that eggs sold in California are
7 produced from hens that are not confined in overly restrictive cages and to reduce
8 the likelihood that contaminated eggs will be sold in California. It is vitally
9 important to ACEF’s members that these protections continue in effect and that
10 consumers remain confident that the eggs they purchase in California are produced
11 more humanely and are free of Salmonella and other pathogens. For the reasons
12 explained below, ACEF should be permitted to intervene in this action.
13
14
15
16

17 BACKGROUND

18 Relevant Statutory and Regulatory Provisions

19
20 Two provisions of California law mandate that eggs sold in California be
21 produced from hens whose enclosures meet certain minimum space requirements:
22 (1) AB 1437, codified as amended at Cal. Health & Safety Code §§ 25995-25996.3;
23 and (2) Proposition 12, codified at Cal. Health & Safety Code §§ 25990-25993.1.
24
25

26 ¹ Counsel for ACEF conferred with counsel for the parties to this action regarding its motion to
27 intervene. The United States takes no position on the motion. Defendants do not oppose the
28 motion. *See* Declaration of Thomas G. Saunders, dated July 31, 2025.

1 Additionally, a California Department of Food and Agriculture regulation imposes
2 requirements for shipping documents for eggs sold in California. *See* Cal. Code
3 Regs. tit. 3, § 1320.4 (entitled “Shell Egg and Liquid Egg Shipping Document
4 Requirements”). In this lawsuit, the United States contends that some of these
5 provisions are preempted by federal law. *See* Complaint for Declaratory and
6 Injunctive Relief (July 9, 2025), Dkt. 1.
7
8

9 AB 1437 was signed into law by Governor Schwarzenegger on July 6, 2010,
10 and it requires that all eggs sold in California come from hens that are granted a
11 minimum amount of enclosure space. Cal. Health & Safety Code § 25996. Its
12 legislative findings explain that “food animals that are treated well and provided
13 with at least minimum accommodation of their natural behaviors and physical needs
14 are healthier and safer for human consumption.” Cal. Health & Safety Code §
15 25995(a). The Legislature noted its intent to “protect California consumers from the
16 deleterious[] health, safety, and welfare effects of the sale and consumption of eggs
17 derived from egg-laying hens that are exposed to significant stress and may result in
18 increased exposure to disease pathogens including salmonella.” *Id.* § 25995(e).
19
20
21

22 AB 1437 provides:
23

24 Commencing January 1, 2015, a shelled egg shall not be sold or
25 contracted for sale for human consumption in California if the seller
26 knows or should have known that the egg is the product of an egg-
27
28

1 laying hen that was confined on a farm or place that is not in compliance
2 with animal care standards set forth Chapter 13.8 (commencing with
3 Section 25990).
4

5 Cal. Health & Safety Code § 25996.

6 The animal care standards referenced in AB 1437 were added by Proposition
7
8 2, an animal-welfare initiative adopted by the California voters in 2008.² They were
9 later amended by Proposition 12, which was adopted by the California voters in
10 2018.³ Proposition 12’s stated purpose is to “phas[e] out extreme methods of farm
11 animal confinement” that “threaten the health and safety of California consumers[]
12 and increase the risk of foodborne illness.”⁴
13

14 The cross-referenced animal care standards provide that “[a] farm owner or
15 operator within the state shall not knowingly cause any covered animal [including
16 egg-laying hens] to be confined in a cruel manner.” Cal. Health & Safety Code
17 § 25990. As amended by Proposition 12, the standards define “[c]onfined in a cruel
18 manner,” as of January 1, 2022, to include “confining an egg-laying hen with less
19 than the amount of usable floorspace per hen required by the 2017 edition of the
20
21
22

23
24 ² See California Sec’y of State, *Official Voter Information Guide: California General Election,*
25 *Tuesday, November 4, 2008* at 82 (Aug. 11, 2008) (text of Proposition 2),
<http://vig.cdn.sos.ca.gov/2008/general/pdf-guide/vig-nov-2008-principal.pdf>.

26 ³ California Sec’y of State, *Text of Proposed Laws: California General Election, Tuesday*
27 *November 6, 2018* at 87, <https://vig.cdn.sos.ca.gov/2018/general/pdf/topl.pdf#prop12>.

28 ⁴ *Id.* § 2.

1 United Egg Producers’ Animal Husbandry Guidelines for U.S. Egg-Laying Flocks.”
2 *Id.* § 25991(e)(5). Those Guidelines require cage-free systems that, “[d]epending
3 on the system type,” provide “a minimum range between 1.0 - 1.5 sq. ft. of usable
4 floor space per hen” in order “to allow for normal behavior.”⁵

6 Since Proposition 12 was adopted in 2018, cage-free hens have come to
7 “comprise a growing percentage of the U.S. egg-laying flock” as other States have
8 also regulated hen confinement and as “multiple retailers and food service providers
9 have pledged to only source eggs from cage-free operations.”⁶ One recent study
10 estimates that cage-free hens now make up 46.5% of the current U.S. flock.⁷

13 Proposition 12 directs the California Department of Food and Agriculture and
14 the State Department of Public Health to issue implementing regulations. Cal.
15 Health & Safety Code § 25993. Section 1320.4 of title 3 of the California Code of
16 Regulations is one such regulation. It sets out requirements for the documents of
17 title and shipping manifests that accompany shipments of shell eggs or liquid eggs
18 entering California or made within the state in order to “facilitate product
19 traceability” and “assist distributors and buyers in efforts to ensure products offered
20
21
22

23 ⁵ United Egg Producers, *Animal Husbandry Guidelines for U.S. Egg-Laying Flocks* at 20 (2017
24 ed.), https://uepcertified.com/wp-content/uploads/2019/09/CF-UEP-Guidelines_17-3.pdf.

25 ⁶ Adriana Valcu-Lisman & Grace Grossen, *Growing share of egg-laying hens are cage-free*,
26 U.S. Dep’t of Agric. (Oct. 11, 2023), <https://www.ers.usda.gov/data-products/charts-of-note/chart-detail?chartId=107564>.

27 ⁷ U.S. Dep’t of Agric., *Egg Markets Overview* (July 25, 2025),
28 https://www.ams.usda.gov/mnreports/ams_3725.pdf.

1 in California come from ... compliant enclosures.”⁸ *Id.* § 1320.4(a)(1). If the eggs
2 were produced in compliance with Cal. Health and Safety Code § 25991, the
3 shipping documents must be printed or stamped “Egg CA Prop 12 Compliant.” *Id.*
4 If the eggs were not produced in compliance with that provision and are being
5 shipped for purposes other than in-state commercial sale, they must be marked,
6 depending on that alternate purpose, “For Export,” “For Transshipment,” “Not Prop
7 12 Compliant,” or “Only for use at [an official plant in California for making food
8 products not covered by § 25991].” *Id.* § 1320.4(a)(2)-(3).
9
10

11
12 Section 1320.4(c) further provides:

13 No person shall label, identify, mark, advertise, or otherwise represent
14 shell eggs or liquid eggs for purposes of commercial sale in the state
15 using the term “cage free” or other similar descriptive term unless the
16 shell eggs or liquid eggs were produced in compliance with section
17 1320.1 of this Article.⁹
18
19

20 The regulations do not impose grading standards or affirmative labeling
21
22

23 ⁸ California Dep’t of Food & Agric., *Initial Statement of Reasons* 27 (May 28, 2021),
24 https://web.archive.org/web/20230721121507/https://www.cdffa.ca.gov/AHFSS/pdfs/Animal_Confinement_ISOR_05282021.pdf; *see id.* at 28 (“Without the proposed statements, buyers,
25 inspectors, enforcement officers, certifying agents, and/or the Department have no practical way
26 to determine if product is compliant without reviewing certification and/or registration status for
each distributor[.]”).

27 ⁹ Section 1320.1 of title 3 of the California Code of Regulations, the cross-referenced regulation,
28 lists necessary features of Proposition 12 compliant hen enclosures. *Id.* § 1320.1(a)(1)-(2).

1 requirements for egg cartons.

2 In addition to adopting the provisions challenged in this lawsuit, California
3 imposes stringent Salmonella testing requirements on egg handlers and producers
4 who sell eggs in the state.¹⁰

6 ACEF's Participation in Prior Challenges

7
8 Proposed Intervenor ACEF is a California nonprofit trade organization
9 founded in 2009 comprised of family-owned and operated egg farms. California egg
10 farmers produced about 4 billion eggs in 2022 and accounted for roughly one-third
11 of the eggs consumed by Californians in that year.¹¹ The subsequent outbreak of
12 avian influenza has caused egg production to “decline[] precipitously” and has dealt
13 “major impacts” to California’s egg market.¹² ACEF’s members constitute a
14 significant portion of the California egg industry. It is estimated that they are
15 responsible for more than 50% of the commercial egg-laying hens in California.
16 Declaration of Debra Murdock ¶ 3, dated July 31, 2025 (“Murdock Decl.”). ACEF’s
17 members are thus directly affected by events or circumstances that reduce demand
18 for eggs in California. A number of ACEF’s members also produce eggs outside of
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23 ¹⁰ See Cal. Code Regs. tit. 3, § 1350.

24 ¹¹ California Dep’t of Food & Agric., *California Agricultural Statistics Review 2022-2023* at 93,
25 [https://www.cdfa.ca.gov/Statistics/PDFs/2022-](https://www.cdfa.ca.gov/Statistics/PDFs/2022-2023_california_agricultural_statistics_review.pdf)
26 [2023_california_agricultural_statistics_review.pdf](https://www.cdfa.ca.gov/Statistics/PDFs/2022-2023_california_agricultural_statistics_review.pdf); Olena Sambucci et al., *Avian Influenza and*
27 *the Economics of California Eggs and Milk: Some Early Assessments*, 28 Agric. & Res. Econ.
28 No. 3, 2025, at 2, https://s.giannini.ucop.edu/uploads/pub/2025/02/27/v28n3_1.pdf.

¹² Sambucci, *supra* note 11, at 2, 4.

1 California and import eggs into the State. *Id.* ¶ 5. ACEF's members are therefore
2 subject to regulation under AB 1437, Proposition 12, and Section 1320.4. ACEF's
3 principal purposes are to engage in advocacy regarding policies affecting the egg
4 farming industry and to ensure the continued production of fresh and affordable eggs
5 that meet the food safety and animal care standards that consumers expect. *Id.* ¶ 2.
6
7

8 ACEF has sought to establish clear standards that will govern the amount of
9 enclosure space required for egg-laying hens and to promote food safety. Among
10 other things, ACEF worked for many years to clarify the requirements of Proposition
11 2, the California voter initiative enacted in 2008 that adopted the standard
12 subsequently referenced in AB 1437. Proposition 2 was subsequently amended by
13 Proposition 12.
14
15

16 ACEF has defended AB 1437 and Proposition 12 against repeated legal
17 challenges filed over the last decade that have been uniformly rejected. ACEF was
18 a defendant-intervenor in a 2014 challenge to AB 1437 brought by a coalition of
19 States.¹³ That challenge raised a Dormant Commerce Clause argument (later
20 rejected by the Supreme Court) and, in the alternative, the preemption argument now
21 pressed by the United States.¹⁴ After that lawsuit was dismissed for lack of standing,
22
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24

25 ¹³ See *Missouri v. Harris*, 58 F. Supp. 3d 1059 (E.D. Cal. 2014) (dismissing for lack of standing);
26 *Missouri ex rel. Koster v. Harris*, 847 F.3d 646 (9th Cir. 2017) (affirming dismissal), *cert. denied*
27 *sub nom. Missouri ex rel. Hawley v. Becerra*, 137 S. Ct. 2188 (2017).

28 ¹⁴ *Id.*

1 the States in 2017 sought leave to file an a original action in the United States
2 Supreme Court that would have raised the same Dormant Commerce Clause and
3 preemption claims.¹⁵ ACEF opposed the request and supplied data rebutting the
4 States' predictions of increased nationwide egg prices.¹⁶ That challenge ended when
5 the Supreme Court denied the motion for leave to file a bill of complaint. In 2019,
6 ACEF participated as an amicus curiae in yet another Dormant Commerce Clause
7 challenge to Proposition 12 filed in this Court.¹⁷ The district court denied plaintiff's
8 motion for a preliminary injunction, and that denial was upheld by the Ninth Circuit,
9 where ACEF again participated as an amicus curiae.¹⁸ Finally, ACEF participated
10 as an amicus curiae in still another Dormant Commerce Clause challenge to
11 Proposition 12. ACEF supported California in the National Pork Producers
12 Council's unsuccessful challenge at the Supreme Court.¹⁹ It also participated as an
13 amicus curiae in earlier proceedings in that case in the Ninth Circuit and in the
14 district court.²⁰

15 ¹⁵ See *Missouri v. California*, 139 S. Ct. 859 (2019) (Mem.) (declining review).

16 ¹⁶ Brief for Association of California Egg Farmers as Amicus Curiae in Support of Defendant,
17 *Missouri v. California*, 139 S. Ct. 859 (2019) (No. 22O148).

18 ¹⁷ *N. Am. Meat Inst. v. Becerra*, No. 2:19-cv-08569 (C.D. Cal. Oct. 4, 2019).

19 ¹⁸ *N. Am. Meat Inst. v. Becerra*, 825 F. App'x 518, 519 (9th Cir. 2020), *cert. denied sub nom. N.*
20 *Am. Meat Inst. v. Bonta*, 141 S. Ct. 2854 (2021).

21 ¹⁹ See *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356 (2023) (rejecting Dormant Commerce
22 Clause challenge).

23 ²⁰ See *Nat'l Pork Producers Council v. Ross*, 456 F. Supp. 3d 1201 (S.D. Cal. 2020), *aff'd*, 6
24 F.4th 1021 (9th Cir. 2021), *aff'd*, 598 U.S. 356 (2023).

1 ACEF supports AB 1437, Proposition 12, and Section 1320.4 as important
2 measures that reduce food safety risks and enhance animal welfare.

3 4 **ARGUMENT**

5 Federal Rule of Civil Procedure 24 provides for intervention as of right when
6 a proposed intervenor files a timely motion demonstrating that it has a significant,
7 protectable interest in the subject matter of the lawsuit that will be impaired by an
8 adverse judgment and that the existing parties may not adequately represent its
9 position. The Rule allows permissive intervention when a proposed intervenor files
10 a timely motion and asserts a claim or defense in the case that shares common
11 questions of law or fact with the claims or defenses of the parties to the action.
12 ACEF should be permitted to intervene both as of right and permissively.

13 14 15 16 **I. ACEF IS ENTITLED TO INTERVENE AS A MATTER OF RIGHT**

17 Rule 24(a)(2) provides for intervention by a nonparty as a matter of right if it
18 “(i) timely moves to intervene; (ii) has a significantly protectable interest related to
19 the subject of the action; (iii) may have that interest impaired by the disposition of
20 the action; and (iv) will not be adequately represented by existing parties.” *W.*
21 *Watersheds Project v. Haaland*, 22 F.4th 828, 835 (9th Cir. 2022) (quoting *Oakland*
22 *Bulk & Oversized Terminal, LLC v. City of Oakland*, 960 F.3d 603, 620 (9th Cir.
23 2020)). These requirements are interpreted “broadly in favor of intervention.” *Id.*;
24 *see also Wilderness Soc’y v. United States Forest Serv.*, 630 F.3d 1173, 1179 (9th
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1 Cir. 2011) (en banc) (“[The Ninth Circuit’s] liberal policy in favor of intervention
2 serves both efficient resolution of issues and broadened access to the courts.”
3 (citation omitted)); 6 *Moore’s Federal Practice* § 24.03[1][a], at 24-22 (Matthew
4 Bender 3d ed. 2014) (“Rule 24 is to be construed liberally ... and doubts resolved in
5 favor of the proposed intervenor.”). As the Eastern District of California concluded
6 when ACEF sought to intervene to defend a similar challenge to AB 1437, all four
7 requirements are satisfied in this case. *See Missouri v. Harris*, No. 2:14-CV-00341-
8 KJM-KJ, 2014 WL 2506606, at *8-10 (E.D. Cal. June 3, 2014).

11
12 **A. ACEF’s Motion To Intervene Is Timely**

13 ACEF’s motion to intervene is timely. “Timeliness is a flexible concept; its
14 determination is left to the district court’s discretion.” *8th Wonder Pictures, LLC v.*
15 *Clear Distrib. LLC*, No. CV 21-726 DSF (JEMx), 2021 WL 2323726, at *2 (C.D.
16 Cal. Apr. 27, 2021) (quoting *United States v. Alisal Water Corp.*, 370 F.3d 915, 921
17 (9th Cir. 2004)). The court considers three factors: “(1) the stage of the proceeding
18 at which the applicant seeks to intervene; (2) the prejudice to other parties; and (3)
19 the reason for and length of the delay.” *Id.* at *2 (quoting *Cal. Dep’t of Toxic*
20 *Substances Control v. Com. Realty Projects, Inc.*, 309 F.3d 1113, 1119 (9th Cir.
21 2002)).

22 Here, ACEF filed its motion at the very beginning of proceedings,
23 approximately three weeks after the United States filed its complaint (on July 9,
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2025). *See N. Am. Meat Inst. v. Becerra*, 420 F. Supp. 3d 1014, 1021 (C.D. Cal. 2019) (motion to intervene was timely when filed “25 days after the action commenced”), *aff’d*, 825 F. App’x 518 (9th Cir. 2020). The United States did not serve its complaint for several weeks, and California has not yet responded to the complaint. Permitting ACEF to intervene at this very early stage would not prejudice the other parties to this case in any respect. As required by Rule 24(c), ACEF has attached a proposed answer to the complaint to its motion to intervene. ACEF expects promptly to file a motion for judgment on the pleadings under Rule 12(c) raising threshold legal challenges to the United States’s complaint on the same schedule as any Rule 12 motion by California. That motion and any Rule 12 motion filed by California can be consolidated and considered in a coordinated fashion. ACEF’s intervention thus would not cause delay or “disruption ... in the proceedings.” *Citizens for Balanced Use v. Mont. Wilderness Ass’n*, 647 F.3d 893, 897 (9th Cir. 2011).

B. ACEF Has A Significant Protectable Interest

ACEF has a significant, protectable interest in defending AB 1437, Proposition 12, and Section 1320.4 from challenge. The “protectable interest” requirement is a “practical, threshold inquiry” and “no specific legal or equitable interest need be established.” *Citizens for Balanced Use*, 647 F.3d at 897 (alterations and internal quotation marks omitted); *see also Wilderness Soc’y*, 630 F.3d at 1179

1 (requirement is “primarily a practical guide to disposing of lawsuits by involving as
2 many apparently concerned persons as is compatible with efficiency and due
3 process” (internal quotation marks omitted)). “[A] prospective intervenor ‘has a
4 sufficient interest for intervention purposes if it will suffer a practical impairment of
5 its interest as a result of the pending litigation.’” *Wilderness Soc’y*, 630 F.3d at 1179
6 (quoting *California ex rel. Lockyer v. United States*, 450 F.3d 436, 441 (9th Cir.
7 2006)).
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10 It is well established that parties who have structured their affairs in light of a
11 law or regulation have an interest in intervening to defend the law or regulation from
12 legal challenge. “[I]n cases challenging various statutory schemes as
13 unconstitutional or as improperly interpreted and applied, the courts have recognized
14 that the interests of those who are governed by those schemes are sufficient to
15 support intervention.” 7C Wright et al., *Federal Practice & Procedure: Civil 3d* §
16 1908.1 & n.45, at 336 (collecting cases). For example, in *Lockyer*, the court held
17 that healthcare providers who opposed providing certain services had a sufficient
18 interest to intervene in a suit seeking to invalidate a federal law that provided them
19 with protections. 450 F.3d at 441; *see also Californians for Safe & Competitive*
20 *Dump Truck Transp. v. Mendonca*, 152 F.3d 1184, 1190 (9th Cir. 1998) (union had
21 “significant interest” in California prevailing wage law that plaintiff claimed was
22 preempted); *Cnty. of Fresno v. Andrus*, 622 F.2d 436, 438 (9th Cir. 1980) (a group
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1 of small farmers had an “interest” in administrative proceeding related to
2 reclamation laws that “provide[d] small farmers ... with small tracts of land at
3 nonspeculative prices”); *GHP Mgmt. Corp. v. City of Los Angeles*, 339 F.R.D. 621,
4 623 (C.D. Cal. 2021) (tenant advocacy organizations had interest in “ongoing
5 applicability” of eviction moratorium “which directly impact[s] many of their tenant
6 members”); *Am. Hotel & Lodging Ass’n v. City of Los Angeles*, No. CV 14-09603-
7 AB (SSx), 2015 WL 12745805, at *3 (C.D. Cal. Mar. 25, 2015) (union had “a
8 significantly protectable interest” in wage ordinance “in that its members are
9 beneficiaries” of the ordinance).²¹

13 In this case, ACEF’s members rely on the food safety and animal welfare
14 protections afforded by AB 1437, Proposition 12, and Section 1320.4. As explained

17 ²¹ *Cf. Wal-Mart Stores, Inc. v. Tex. Alcoholic Beverage Comm’n*, 834 F.3d 562, 566 (5th Cir.
18 2016) (trade association had protectable interest in defending “regulatory system governing” its
19 members against a lawsuit that was “premised on the assumption that the [a]ssociation’s
20 members are the beneficiaries of this regulatory system”); *Funds for Animals, Inc. v. Norton*, 322
21 F.3d 728, 730-731, 735 (D.C. Cir. 2003) (Mongolian government agency that benefited from
22 classification of argali sheep as “threatened” rather than “endangered” had protectable interest in
23 litigation challenging the “threatened” determination); *Utahns for Better Transp. v. United States*
24 *Dep’t of Transp.*, 295 F.3d 1111, 1112-1113, 1115-1116 (10th Cir. 2002) (trade association
25 whose members benefited from a challenged government action and whose “interests w[ould] be
26 substantially impaired” by the invalidation of the action had a protectable interest); *Utah Ass’n of*
27 *Counties v. Clinton*, 255 F.3d 1246, 1248, 1252 (10th Cir. 2001) (finding group of proposed
28 intervenors, including environmental advocacy organizations and three private businesses, had
“interest” in suit to invalidate Presidential Proclamation establishing a monument in part due to
businesses’ “economic stake in [the monument’s] continued existence”); *Kleisser v. United*
States Forest Serv., 157 F.3d 964, 972 (3d Cir. 1998) (school district and municipalities that
would receive funds from receipts of approved logging projects and companies that had or would
likely have contracts to cut timber had interest in litigation challenging approval of logging
projects).

1 above, ACEF's members constitute a significant portion of the California egg
2 industry. *See supra* at p. 7. Any disruption to the market that decreases consumption
3 of eggs has a direct and significant impact on ACEF's members. Murdock Decl. ¶
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5 4. The hen enclosure requirements of AB 1437 and Proposition 12, as well as the
6 shipping record requirements of Section 1320.4, are designed to help mitigate the
7 health risks associated with eggs. *See supra* pp. 1-6. The provisions also help to
8 assure Californian consumers that the eggs they are purchasing were produced
9 humanely, which most consumers prefer. Murdock Decl. ¶ 4. As another district
10 court in this Circuit explained in granting ACEF's motion to intervene in the earlier
11 challenge to AB 1437, ACEF thus "has a significantly protectable economic interest
12 in the outcome of the litigation" because "[i]ts members directly benefit from the
13 protections of AB 1437 and [a related regulation] by way of a stable consumer egg
14 demand in California." *Missouri*, 2014 WL 2506606, at *8.

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18 **C. ACEF's Protectable Interest Would Be Impaired By An Adverse**
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20 **Decision**

21 ACEF's protectable interest would be impaired by a ruling striking down AB
22 1437, Proposition 12, and Section 1320.4. Under this prong, "[i]f an absentee
23 would be substantially affected in a practical sense by the determination made in an
24 action, he should, as a general rule, be entitled to intervene.'" *Sw. Ctr. for Biological*
25 *Diversity v. Berg*, 268 F.3d 810, 822 (9th Cir. 2001) (alteration in original); *accord*
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1 *Citizens for Balanced Use*, 647 F.3d at 898. This requirement is not difficult to
2 satisfy: Once it is “found that [a proposed intervenor] ha[s] a significant protectable
3 interest, [the Ninth Circuit] ha[s] little difficulty concluding that the disposition of
4 th[e] case may, as a practical matter, affect it.” *Lockyer*, 450 F.3d at 442; *accord*
5 *Citizens for Balanced Use*, 647 F.3d at 898. ACEF’s interest in ensuring that
6 contaminated eggs are not sold in California would be undermined by an adverse
7 judgment because AB 1437, Proposition 12, and Section 1320.4 are designed to help
8 protect against the spread of *Salmonella* and other pathogens. Just as it did in
9 *Missouri v. Harris*, “ACEF meets the third requirement for intervention as of right.”
10 2014 WL 2506606, at *9.

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14 **D. ACEF’s Interests May Not Be Adequately Represented**

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16 ACEF’s interests in this litigation may not be adequately represented by the
17 State of California. This prong of the test is met “if the applicant shows that
18 representation of his interest ‘*may be*’ inadequate; ... the burden of making that
19 showing should be treated as minimal.” *Trbovich v. United Mine Workers of Am.*,
20 404 U.S. 528, 538 n.10 (1972) (emphasis added); *Citizens for Balanced Use*, 647
21 F.3d at 900 (“We stress that intervention of right does not require an absolute
22 certainty ... that existing parties will not adequately represent its interests.”). The
23 Ninth Circuit considers three factors in making this determination: “(1) whether the
24 interest of a present party is such that it will undoubtedly make all of a proposed
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1 intervenor’s arguments; (2) whether the present party is capable and willing to make
2 such arguments; and (3) whether a proposed intervenor would offer any necessary
3 elements to the proceeding that other parties would neglect.” *Citizens for Balanced*
4 *Use*, 647 F.3d at 898.

6 The Supreme Court recently reiterated that Rule 24(a) permits intervention by
7 private parties who seek to “assert[] a related interest to that of an existing
8 government party.” *Berger v. N.C. State Conf. of the NAACP*, 597 U.S. 179, 195
9 (2022). Reviewing its earlier decision in *Trbovich*, in which it permitted a union
10 member who had filed an administrative complaint with the Department of Labor to
11 intervene in the enforcement suit he had triggered, the Supreme Court cautioned that
12 a government party may not adequately represent a non-party even if, “[a]t a high
13 level of abstraction” the non-party’s interest and the government party’s interest
14 might “seem[] closely aligned.” *Id.* at 196 (citing 404 U.S. at 538). Indeed, after
15 studying the particularities of the proffered interests, the *Trbovich* Court recognized
16 that “the union member sought relief against his union, full stop; meanwhile, the
17 Secretary also had to bear in mind broader public-policy implications.” *Id.* In such
18 circumstances when the government party’s and non-party’s interests are “related”
19 but not “identical,” the *Trbovich* Court recognized and the *Berger* Court
20 underscored, no presumption of adequate representation applies and the non-party
21 movant bears only a “minimal” burden to establish inadequacy. *Id.* (quoting
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1 *Trbovich*, 404 U.S. at 538 n.10).

2 In line with this guidance, courts “frequently” conclude that the government
3 is an inadequate representative “when one group of citizens sues the government,
4 challenging the validity of laws or regulations, and the citizens who benefit from
5 those laws or regulations wish to intervene and assert their own, particular interests
6 rather than the general, public good.” 6 *Moore’s Federal Practice*
7 § 24.03[4][a][iv][B], at 24-58.1. For example, in *Forest Conservation Council v.*
8 *United States Forest Service*, 66 F.3d 1489 (9th Cir. 1995), the Ninth Circuit
9 explained that “[t]he Forest Service is required to represent a broader view than the
10 more narrow, parochial interests of [proposed-intervenors] the State of Arizona and
11 Apache County.” *Id.* at 1499, *abrogated on other grounds by Wilderness Soc’y*, 630
12 F.3d at 1177, 1180; *see also Mendonca*, 152 F.3d at 1190 (union “demonstrated that
13 the representation of its interests by the named” state agencies and agents “may have
14 been inadequate” because “the employment interests of [its] members were
15 potentially more narrow and parochial than the interests of the public at large”);
16 *Citizens for Balanced Use*, 647 F.3d at 899 (observing that “the government’s
17 representation of the public interest may not be identical to the individual parochial
18 interest of a particular group just because both entities occupy the same posture in
19 the litigation” (internal quotation marks omitted)); *Barke v. Banks*, No. 8:20-CV-
20 00358-JLS-ADS, 2020 WL 2315857, at *3 (C.D. Cal. May 7, 2020) (“[I]t is no novel
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1 legal conclusion to determine that a neutral governmental body’s interests
2 sufficiently diverge from those of an organization representing a specific sub-set of
3 the public to satisfy the inadequate representation prong.”).

4
5 Other circuits proceed similarly. In *Wal-Mart Stores, Inc. v. Texas Alcoholic*
6 *Beverage Com’n*, 834 F.3d 562, 569 (5th Cir. 2016), the Fifth Circuit permitted a
7 trade association to intervene to defend a regulatory scheme administered by a state
8 agency because the association’s “interests—protecting its members’ businesses—
9 are narrower than the Commission’s broad public mission.” Similarly, in *Sierra*
10 *Club v. Espy*, 18 F.3d 1202 (5th Cir. 1994), the Fifth Circuit held that two trade
11 associations made up of timber purchasers were not adequately represented by the
12 government in a suit brought by an environmental organization to bar certain timber
13 sales. *Id.* at 1203, 1207-1208. The court explained that “[t]he government must
14 represent the broad public interest, not just the economic concerns of the timber
15 industry.” *Id.* at 1208. The Tenth Circuit reasoned likewise in *Utah Association of*
16 *Counties v. Clinton*. 255 F.3d 1246 (10th Cir. 2001). There the court concluded that
17 a group of entities, including several environmental associations, two hotels, and a
18 private company, seeking to intervene in a lawsuit brought to invalidate a
19 Presidential Proclamation establishing a national monument might not be adequately
20 represented by the federal government. *Id.* at 1248, 1256. The *Utah Association*
21 court observed that “[i]n litigating on behalf of the general public, the government
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1 is obligated to consider a broad spectrum of views, many of which may conflict with
2 the particular interest of the would-be intervenor” and approvingly cited “cases from
3 other circuits holding that an intervenor’s interest would not be adequately
4 represented by a government entity that must represent the broader public interest.”
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6 *Id.* at 1255-1256.

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8 As in the cases discussed above, ACEF’s interests diverge from the
9 government’s. California represents all stakeholders, and the state has a tradition of
10 anti-animal cruelty legislation. *E.g., Association des Eleveurs de Canards et d’Oies*
11 *du Quebec v. Harris*, 729 F.3d 937, 942 (9th Cir. 2013) (describing California’s ban
12 on the sale of *foie gras*). But it must also take into account its relationship with the
13 United States and the views of in-state business groups that might oppose the
14 challenged provisions. As a result, “[w]hile California and ACEF both share a
15 common interest in defending AB 1437,” as well as Proposition 12 and Section
16 1320.4, “California may not focus on ACEF’s economic interests in contrast to the
17 broad public interest in ensuring egg products are safe for consumption in
18 California.” *Missouri*, 2014 WL 2506606, at *9.

19
20 In addition, ACEF adds a necessary element to the proceedings that would
21 otherwise be missing: the perspective of private businesses that are well-versed in
22 the need for food safety and that support the positive health effects of AB 1437,
23 Proposition 12, and Section 1320.4. *See Sw. Ctr. for Biological Diversity*, 268 F.3d
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1 at 823 (construction company and trade associations may intervene in suit filed
2 against federal agencies and the City of San Diego because they “would likely offer
3 important elements to the proceedings that the existing parties would likely neglect”
4 and because they would “express their own unique private perspectives”); *Apartment*
5 *Ass’n of Los Angeles Cnty. v. City of Los Angeles*, No. CV 20-05193-DDP (JEMx),
6 2020 WL 4501792, at *3 (C.D. Cal. Aug. 5, 2020) (renter advocacy group’s interest
7 in eviction moratorium may not be adequately protected by government party
8 because the government party may not have “access to the information that would
9 underpin” the group’s arguments); 6 *Moore’s Federal Practice* § 24.03[5][a], at 24-
10 60, 24-61 (although “the mere fact that a movant has special expertise in a relevant
11 area does not necessarily support mandatory intervention,” “courts look favorably
12 on intervention petitions offering a unique perspective”). As an organization whose
13 members are responsible for 50% of the egg-laying hens in California, have followed
14 stringent food quality standards for nearly two decades, and produce eggs both in
15 California and in other States, ACEF brings unique expertise to this litigation.
16
17 Murdock Decl. ¶ 3. ACEF’s participation may thus prove helpful to this Court as
18 it considers the threshold questions of law that require dismissal in this case or if it
19 evaluates the United States’s assertions about the causes of egg-price trends, the
20 effectiveness of certain production practices, and the impact of the challenged
21 provisions on the egg market. *See* Compl. ¶¶ 1-4.
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II. ACEF IS ALSO ENTITLED TO PERMISSIVE INTERVENTION

ACEF is also entitled to intervene permissively under Federal Rule of Civil Procedure 24(b)(1)(B). “[A] court may grant permissive intervention where the applicant for intervention shows (1) independent grounds for jurisdiction; (2) the motion is timely; and (3) the applicant’s claim or defense, and the main action, have a question of law or a question of fact in common.” *United States v. City of Los Angeles*, 288 F.3d 391, 403 (9th Cir. 2002) (citation omitted). Once these requirements are met, the court may exercise its sound discretion to permit intervention, considering “whether intervention will unduly delay or prejudice the original parties[,] ... whether the applicant’s interests are adequately represented by the existing parties and whether judicial economy favors intervention.” *8th Wonder Pictures*, 2021 WL 2323726, at *2; *see also Perry v. Schwarzenegger*, 630 F.3d 898, 905 (9th Cir. 2011) (per curiam) (listing other factors district court may consider, including “whether parties seeking intervention will significantly contribute to full development of the underlying factual issues in the suit and to the just and equitable adjudication of the legal questions presented” (quoting *Spangler v. Pasadena Bd. of Educ.*, 552 F.2d 1326, 1329 (9th Cir. 1977)); 6 *Moore’s Federal Practice* § 24.10[1], at 24-63 (“[T]he decision regarding whether to grant permissive intervention is always subject to the inherently discretionary considerations of equity and judicial economy.”).

1 All three requirements for permissive intervention are satisfied in this case.
2 First, “the independent jurisdictional grounds requirement does not apply to
3 proposed intervenors in federal-question cases when the proposed intervenor is not
4 raising new claims.” *Freedom from Religion Found., Inc. v. Geithner*, 644 F.3d 836,
5 844 (9th Cir. 2011). The United States filed suit invoking federal jurisdiction, and
6 ACEF does not assert any new claims. In any event, ACEF has a clear and direct
7 interest in the litigation and thus could easily establish standing. Second, the factors
8 considered to determine whether Rule 24(b)’s timeliness requirement is met are the
9 same as for Rule 24(a). *See San Jose Mercury News, Inc. v. United States Dist. Ct.—*
10 *N. Dist. (San Jose)*, 187 F.3d 1096, 1101 (9th Cir. 1999). Although some courts
11 treat the timeliness requirement less “leniently” in the context of permissive
12 intervention, *SST Sterling Swiss Trust 1987 AG v. New Line Cinema Corp.*, No. CV
13 05-2835-DSF (VBKx), 2006 WL 8432057, at *2 (C.D. Cal. Jan. 23, 2006) (quoting
14 *United States v. Confederated Tribes & Bands of Warm Springs Rsrv. of Or.*, 745
15 F.2d 550, 552 (9th Cir. 1984)), ACEF’s motion, filed just weeks after the United
16 States’s complaint, easily meets the timeliness requirement even under a stricter
17 standard of review. Third, ACEF’s and California’s positions have a “common
18 question of law”: whether AB 1437, Proposition 12, and Section 1320.4 are
19 preempted by federal law. *See Agua Caliente Band of Cahuilla Indians v. Riverside*
20 *Cnty.*, No. EDCV 14-00007-DMG (DTBx), 2014 WL 12588284, at *4 (C.D. Cal.
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1 Apr. 21, 2014) (public agency may intervene under Fed. R. Civ. P. 24(b) in suit
2 alleging federal preemption of municipal ordinance because the entity’s “defense
3 and the main action share common questions of law and fact”).
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5 Because all three requirements are met, this Court should exercise its
6 discretion to grant ACEF leave to intervene. As discussed above, ACEF’s
7 intervention will not delay proceedings and will not prejudice the United States,
8 which will be afforded ample opportunity to address any arguments raised by ACEF
9 in defense of AB 1437, Proposition 12, and Section 1320.4. More broadly,
10 permitting ACEF’s intervention allows it to offer its distinctive perspective on the
11 litigation and will serve the ends of justice. Granting intervention permits ACEF to
12 bring its specialized knowledge about food safety and the economics of egg farming
13 to this litigation. *See 6 Moore’s Federal Practice* § 24.10[2][b], at 24-67 (“Courts
14 are particularly willing to grant permissive intervention in complex litigation when
15 the movant may be able to provide unique input that may be of value to the court ...
16 ‘especially on subjects within the special expertise of the intervenor.’”). Moreover,
17 as discussed above, ACEF has several important interests at stake this litigation that
18 California may not adequately represent.
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24 CONCLUSION

25 For the reasons given above, this Court should grant ACEF’s unopposed
26 motion to intervene.
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1 DATED: August 1, 2025

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LOCAL RULE 11-6.2 CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Proposed Defendant-Intervenor Association of California Egg Farmers, certifies that this brief contains 5,705 words, which complies with the word limit of L.R. 11-6.1.

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